IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.233 OF 2005

1. The State of Maharashtra
through the Addl.Chief
Secretary to Government,
Home Department,
Mantralaya, Mumbai - 32 ..
2. Asst. Commissioner of Police
HQ. Thane, having office at
Court Naka - Thane .. Petitioners.

Vs

Kishor Bhalchandra Kulkarni
Govt.Service as Sr.Grade Clerk
Commissioner of Police, Thane
Dist. Thane.
Kalyan (W), Thane .. Respondent

ALONGWITH

WRIT PETITION NO.242 OF 2005

1. The State of Maharashtra
through the Addl.Chief
Secretary to Government,
Home Department,
Mantralaya, Mumbai - 32 ..
2. Asst. Commissioner of Police
HQ. Thane, having office at
Court Naka - Thane .. Petitioners.

Vs

Uttam Narayan Pardeshi
Govt.Service as Police
Sub-Inspector, Badlapur
police station, Badlapur,
Dist.Thane
R/o No.5, Bldg. No."C",
Vitthalwadi police line,
Ulhasnagar - 4.
Dist. Thane .. Respondent.

ALONGWITH

WRIT PETITION NO.259 OF 2005

1. The State of Maharashtra
through the Addl.Chief
Secretary to Government,
Home Department,
Mantralaya, Mumbai - 32 ..
2. Asst. Commissioner of Police

HQ. Thane, having office at
Court Naka - Thane .. Petitioners.
Vs
Balkrishna Narayan Salunkhe
Govt.Service as Police Head
Constable, Traffic Branch,
Kalyan, Dist. Thane.
R/o. Madhavrao Building,
Rambaug Main Road,
Behind Mamta Medical Store
Kalyan (W), Dist.Thane .. Respondent.

ALONGWITH

WRIT PETITION NO.261 OF 2005

1. The State of Maharashtra
through the Addl.Chief
Secretary to Government,
Home Department,
Mantralaya, Mumbai - 32 ..
2. Asst. Commissioner of Police
HQ. Thane, having office at
Court Naka - Thane .. Petitioners.
Vs
Dilip Khandu More
Govt.Service as Police Head
Constable, Wagle Estate
police station, Thane City,
Dist.Thane
R/o. Remand Home Police Line,
Bhiwandi, Dist.Thane. .. Respondent.

Mr.N.P.Deshpande AGP for the State.
Mr.A.R.Pitale for the respondents.

CORAM : V.G.PALSHIKAR &
D.B.BHOSALE, JJ.

DATED : 17TH OCTOBER 2005.

ORAL JUDGMENT (PER D.B.BHOSALE, J.)

. Heard learned counsel for the parties.

2. Rule, returnable forthwith. Mr.Pitale, learned counsel waives service for the respondents. By consent of the parties the matter is taken up for

final hearing.

3. These writ petitions under Article 226 of the Constitution of India are directed against the common judgment and order dated 19.12.2003 rendered by the Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai in original application Nos.1086, 1088, 1089 and 1091 of 2003 by which all the original applications filed by the respondents seeking quashing of their suspension and reinstatement have been allowed. The Tribunal by the impugned judgment, has directed the petitioners to reinstate all the respondents in non-executive posts till the conclusion of their trials in the criminal cases pending against them under the provisions of Prevention of Corruption Act, 1988 (for short "the said Act").

4. The respondents-original applicants, at the relevant time, were working in the police department on different posts. The respondent in writ petition No.242 of 2005 was working as a police Sub-Inspector at Badlapur police station, District Thane. The respondents in writ petition nos.261 and 259 of 2005 were working as police head constables at Wagle Estate police station and Thane City Traffic, Thane respectively and the respondent in writ petition

no.233 of 2005 was working as a senior clerk in the office of the Commissioner of Police, Thane. All the respondents were trapped by the anti-corruption bureau and were caught red handed and in pursuance thereof the criminal cases have been registered against them under the provisions of the said Act. Based on the report of anti-corruption bureau, the petitioners placed them under suspension by the orders dated 19.8.2003, 28.3.2003, 2.12.2002 and 6.5.2002 respectively. The respondents had taken exception to the said orders and preferred representations to the petitioners requesting for revocation of the suspension order and since their request was either not consider or turned down they preferred the aforementioned original applications before the tribunal. Admittedly, the criminal cases have been registered against all the respondents under the provisions of the said Act and the cases are pending for disposal before the concerned courts.

5. The orders of suspension were assailed by all the respondents on two grounds, firstly, that the petitioners have discriminated in not revoking the orders of suspension for 18-24 months which is causing tremendous hardship not only to them but to their families and, secondly, hearing of their cases is not likely to commence in near future and hence

they may be reinstated. In support of their first contention it was pointed out that in case of some other officers in the police department, who were similarly placed, the petitioners had revoked the orders of suspension and allowed them to resume on duty, pending their criminal cases in courts. Reliance was also placed on the order passed by the tribunal dated 16.10.2003 by which the orders of suspensions had been set aside in Original Application Nos.572, 573 and 574 of 2003, filed by some other officers working in the police department, who came to be reinstated pending criminal cases against them. It is against this backdrop the tribunal after considering the factual matrix and having considered the submissions advanced by the learned counsel appearing for the parties in paragraph 10 of the impugned judgment recorded its reasons for allowing all the applications filed by the respondents. The relevant observations read thus:

> "10. Irrespective of the ground of discrimination, the fact remains that in these cases the applicants have been placed under suspension for over 18 months in almost all cases and in some cases for nearly two years. It is not the case of the Respondents that the applicants are likely to tamper with evidence or influence the witnesses. The charge sheet have been filed in all these cases. However, the trials in these cases may take their own time. It will be unfair to place the applicants under suspension till

> these cases reach a final stage. The observation made by this Tribunal in O.A. 323/1999 that the applicants, by being placed under suspension will not be allowed to repeat the misconduct can be taken care of by giving directions that the applicants should be given non-executive postings. I do not consider it necessary to deal with the other arguments advanced by the learned advocate for the applicants."

6. That order is under challenge in the instant writ petitions. Mr.Deshpande, learned A.G.P. submitted that the tribunal committed gross error of law in revoking the suspension of the respondents by overlooking the government policy as well as the law laid down by the Apex Court in a long series of judgments. He placed reliance upon the judgments of the Apex Court in **(1) K.C.Sareen Vs. C.B.I. Chandigarh (2001) 6 SCC 584, (2) Allahabad Bank and Anr. Vs. Deepak Kumar Bhola (1997) 4 SCC 1, (3) U.P.Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan 1993 Supp.(3) SCC 483** and submitted that the tribunal committed manifest error of law in allowing the original applications filed by the respondents merely on the ground that the respondents have been placed under suspension for over 18-24 months and their trials will take long time and that they are not likely to tamper with evidence or any witness. On the other hand Mr.Pitale, learned counsel for the respondents supported the order passed by the tribunal and the only contention

advanced by him was that the trial of the respondents is not likely to begin in near future and no prejudice will be caused if the respondents are reinstated and allowed to work in non executive post.

7. The factual matrix clearly reveals that the respondents had allegedly committed an offence involving the moral terpitude and were put under suspension in the light of the Government policy reflected in the government resolutions issued from time to time. The petitioners have specifically denied the allegation of discrimination in revoking the orders of suspension against other police personels, who were involved in criminal cases of corruption. The representation made by the respondents were considered and rejected on the ground that they were caught red handed and the criminal cases filed against them are pending before the concerned courts.

8. It is against this backdrop, in our opinion, it would be indeed inconceivable that the petitioners should allow the respondents to resume on duty when they are facing serious charges of corruption. Allowing such employee to remain in seat would result in giving him further opportunity to indulge in the acts for which he is being prosecuted. Merely

because the respondents are under suspension for over 18-24 months cannot be a ground to pass the order of reinstatement. The Apex Court in **Allahabad Bank and Anr**. (supra) has made it clear that "the mere fact that nearly ten years have elapsed since the charge-sheet was filed, can also be no ground to allow the respondents to come back to duty on a sensitive post, unless he is exonerated of the charge". In that case a delinquent was an employee of the Bank who allegedly had committed forgery and wrongful withdrawal of money and was under suspension. The Apex Court had further observed that ordinarily, when there is accusation of corruption, the delinquent has to be kept away from establishment till the charges are finally disposed of.

9. It is possible that in some cases a trial of the case may not begin early and as a result of which sufferings of the concerned public servant may prolong but that does not mean that the deliquent employee who is placed under suspension on the charges of corruption be reinstated and allowed to resume duty. The remedy in such cases for the delinquent is to approach the concerned court where his trial is pending for disposal and in such cases it is for that court to pass order either expediting hearing of the case or decide the case within time

frame. In any case the ground of delay in disposal of case of the delinquent who is placed under suspension on the charge of corruption cannot be and should not be a ground for reinstatement irrespective of the fact whether or not such reinstatement is in non executive post.

10. At this stage we can usefully make reference to the judgment of the Apex Court in **K.C.Sareen's** case (supra). In that case the Apex Court was considering the prayer of a public servant seeking suspension of his conviction in order to get back on duty pending appeal before the High Court which was likely to take long time for hearing. A specific argument was advanced in that case before the High Court that the appeal was not likely to be boarded for hearing without the lapse of ten years and that itself would defeat the ends of justice and, therefore, the prayer was made that the order of conviction be suspended. Before the Apex Court the argument was advanced by the learned counsel for the delinquent that his trial can logically reach its end only when the appeal court decides the matter the conviction passed by the trial court cannot be treated as having become absolute. An endeavour was made to draw support for the said proposition from the observations made by the Apex Court in **Akhtari**

Vs. State of M.P. (2001) 4 SCC 355. In that case it was observed that the appeal being a statutory right, the trial court's verdict does not attain finality during the pendency of the appeal and, therefore, for that purpose his trial continue despite conviction. While dealing with the aforesaid arguments and the question involved the Apex Court in paragraph 12 made certain observations which are eloquent. The relevant observations reads thus:

> "12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as the judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact taht an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of reinstatement order, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption

> is allwoed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institution besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold any (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction."

11. We draw support from the aforesaid observations of the Apex Court to hold that a public servant who is charged of corruption should be kept away from the office until he is judicially absolved. Merely because a trial of such public servant is being delayed, that by itself should not be a ground for passing an order of reinstatement. If such public servant is reinstated and allowed to continue to do official acts until he is judicially absolve from the charge of corruption, by reason of reinstatement order it is public interest which suffers and sometimes even irreparably. When such public servant is allowed to hold public office, it would impair the morale of other persons manning such office and consequently that would erode already

shrunk confidence of the people in such public institution besides demoralising the other honest public servants who would either be his colleagues or subordinates. If honest public servants are compelled to take orders from officer, facing charges of corruption on account of setting aside the suspension the fallout would be one of shaking the system itself. As against this if a public servant, who is facing the charge of corruption, is acquitted in trial or is finally absolved of the charge of corruption, the order of suspension can always be revised and if such public servant is reinstated he will be entitled to all the benefits to which he would have been entitled to had he continued in service. It is also open for such public servant to approach the appropriate court for expediting the trial but he cannot seek reinstatement on the ground that the trial is not likely to commence early or is likely to be prolonged.

12. We, therefore, allow these petitions. The impugned judgment and order is quashed and set aside. However, we wish to state that it is open to the respondents to move the concerned court for early hearing of the criminal cases against them. If the Court is satisfied that the respondents have reasonably good prospect of being exonerated or that

there is any other special reason, we hope that the Court would board the case for hearing on an early date. Accordingly, the impugned judgment and order dated 19.12.2003 rendered in Original Application Nos.1086, 1088, 1089, 1091 of 2003 is quashed and set aside. Rule is made absolute.

(D.B.Bhosale, J.) **(V.G.Palshikar, J.)**